

ORIGINAL

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Arizona Corporation Commission

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**COMMISSIONERS**

Gary Pierce, Chairman  
Paul Newman, Commissioner  
Brenda Burns, Commissioner  
Bob Stump, Commissioner  
Sandra D. Kenndy, Commissioner

**Before the Arizona Corporation Commission**

J. Stephen Gehring, Bobby Jones, Lois  
Jones Private Citizens, Injured Parties,  
Complainants,

vs.

PAYSON WATER CO. INC./BROOKE  
UTILITIES INC.

Respondents.

**DOCKET NO. W-03514A-12-0008**

**RESPONSE AND OBJECTION TO  
RESPONDENTS MOTION TO  
"DELETE" BROOKE UTILITIES, INC.  
AS A PARTY TO THE COMPLAINT  
AND MOTION TO DENY THE DELETION  
OF BROOKE UTILITIES INC. FROM THE  
COMPLAINT.**

**NOW COMES**, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, to object to Respondent's Reply to Complainants' Response to Respondent's Motion to "Delete" Brooke Utilities, Inc. as a Party to the Complaint.

Brooke Utilities Inc. has been properly Joined to the action pursuant to Ariz. Rules of Civ. Pro., Rules 17 and 19 (a) for the simple fact that the Commission has jurisdiction over all Corporations filing Articles of Incorporation in the State of Arizona. Brooke Utilities Inc. is incorporated in the State of Arizona and Arizona has jurisdiction over Brooke Utilities Inc. through the Arizona Corporation Commission. "The burden is on the defendant to show the nonexistence of jurisdictional facts." Russell v. Butler (Tex Civ app) 47 S.W. 406; Gilchrist v. Oil Land Co., 21 W. Va. 115.

**R14-3-101. Scope and construction of rules, special orders**

**A. Procedure governed.** Except as may be otherwise directed by the Commission, and when not in conflict with law or the regulations or orders of this Commission, these Rules of Practice and Procedure shall govern in all cases before the Corporation Commission including but not limited to those arising out of Article XV of the Arizona Constitution, or Titles 10, 40, or 44 of the Arizona Revised Statutes. In all cases in which procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court of Arizona as established by the Supreme Court of the state of Arizona shall

govern. Notwithstanding any of the above, neither these rules nor the Rules of Civil Procedure shall apply to any investigation by the Commission, any of its divisions or its staff.

B. Liberal construction -- waiver. These rules shall be liberally construed to secure just and speedy determination of all matters presented to the Commission. If good cause appears, the Commission or the presiding officer may waive application of these rules when not in conflict with law and does not affect the substantial interests of the parties.

### **R14-3-103. Parties**

**D. Respondent.** Any person against whom a complaint or petition is filed or any person who may be subject to having any schedule, rate or tariff forfeited or revoked by the Commission, shall be designated as "Respondent"

**ARS § 40-246(B).** specifically states as follows:

B. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for mis-joinder or non-joinder of parties or causes, either before the commission, or on review by the courts. The commission need not dismiss a complaint because of the absence of direct damage to the complainant.

Respondents attempt to place the blame for the "inflammatory pleadings" that have encouraged confrontation and polarization of the parties and the issues at hand on the Complainants where in fact upon review of the Respondent's pleadings the reverse is the truth.

Respondents have repeatedly attacked, insulted, belittled and diminished the Complainants whereas, the Complainants have responded with the most appropriate and accurate descriptions and facts in support of their position against their aggressor. Whether the Respondents like it or not Brooke Utilities Inc. has been properly joined to the Complaint pursuant to ARCP Rule 19(a) and the Ariz. Adm. Codes and Statute so cited above and is subject to the jurisdiction of the Commission in these matters.

Respondents argue that BUI is not an Arizona Public Service Corporation and that the Commission only has jurisdiction and regulatory authority over Public Service Corporation pursuant to Article XV (Arizona Constitution) and A. R. S. §§ 40-250 and 251. However, Article XV § 2; defines a "**Public Service Corporation**" in part as:

"All corporations other than municipal engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; . . ."

**R14-2-801. Definitions:** In this Article, unless the context otherwise requires:

1. "Affiliate," with respect to the public utility, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under

common control with”), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise.

2. “Commission.” The Arizona Corporation Commission.

3. “Entity.” A corporation, partnership, limited partnership, joint venture, trust, estate, or natural person.

4. “Holding Company” or “Public Utility Holding Company.” Any affiliate that controls a public utility.

8. “Utility” or “Public Utility. Any Class A investor-owned public service corporation subject to the jurisdiction of the Arizona Corporation Commission.

#### **R14-2-802. Applicability**

A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules.

The definitions above include utility companies like BUI. BUI presents itself to be a public utility on the public records with the Ariz. Corp. Commission and in its 2011 Annual Report to the Commission and filed its Articles of Incorporation with the Secretary of State and the Commission.

Both BUI and PWC are licensed and registered with the Ariz. Corp. Com. to conduct business in the State of Arizona, as UTILITIES and list their “domestic” address and residences as 1011 So. Stover Rd. in Payson, Arizona, thus subject to regulation within the State of Arizona and the jurisdiction of the Arizona Corporation Commission;

In A. C. C. Decision No. 60972 Brooke Utilities Inc. submitted to the authority, regulation and jurisdiction of the Commission.

Further, the Respondents arguments that PWC does not meet the criteria of a (A.R.S.) R14-2-801 (1) Affiliate associated with a Class A investor-owned utility under the jurisdiction of the Commission and that PWC is a Class C water utility not a Class A water utility, does not warrant BUI from being removed from the Complaint;

The Respondents request to the Commission to Direct Complainant’s to amend the Complaint to exclude references to BUI as a party thereto and refrain from referring to the Respondents as anything other than PYWCo., is entirely without merit, it is an “ego thing.”

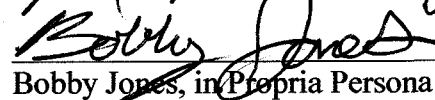
The Respondents claims and arguments appear to be frivolous and designed to intentionally mislead to prevent the Complainants from obtaining documents and records that are vital and necessary to the issues in these proceedings and that Brooke Utilities Inc. have and maintain in their possession and control.

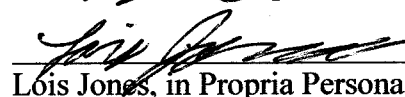
It should further be noted that, the Complainants have reviewed and studied both A. R. S. §§ 40-250 and 251 and can find nothing relevant that would relate to or justify the Respondents frivolous claim that Brooke Utilities Inc. is not an Arizona Corporation and can not be regulated by the Corporation Commission and that the Commission has no jurisdiction over BUI.

**Wherefore**, the Complainants request of the honorable Commission and its Administrative Law Judge that, the Respondents Motion to compel the Complainants to amend their Complaint to exclude all references to Brooke Utilities Inc. as a party thereto and hereafter refrain from referring to the Respondents as anything other than PYWCo., be denied and that the Complainants be allowed to proceed further with their Complaint without any revisions whatsoever.

**Respectfully submitted** this 9<sup>th</sup> day of April, 2012

  
J. Stephen Gehring, in Propria Persona

  
Bobby Jones, in Propria Persona

  
Lois Jones, in Propria Persona

#### **CERTIFICATE OF SERVICE**

The Original and 13 copies of the foregoing Motion have been mailed this 7<sup>th</sup> day April, 2012 to the following:

DOCKET CONTROL  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 7<sup>th</sup> day April, 2012 to the following:

Bobby and Lois Jones  
7325 N. Caballero Rd.  
Payson, Az. 85541

Robert T. Hardcastle  
P. O. Box 82218  
Bakersfield, Ca. 93380

By:  \_\_\_\_\_